

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,

Plaintiff-Respondent,

vs.

CIVIL NO. 08-409 JP/LFG
CRIM. NO. 04-2147 JP

JOHN SAUNDERS,

Defendant-Movant.

**ORDER ADOPTING MAGISTRATE JUDGE'S
FINDINGS AND RECOMMENDED DISPOSITION,
ORDERING EVIDENTIARY HEARING ON ONE CLAIM,
AND DISMISSING OTHER CLAIM**

THIS MATTER came before the Court on the Magistrate Judge's Findings and Recommended Disposition [Doc. 18], filed October 3, 2008. The Magistrate Judge recommended dismissal of one of Defendant-Movant John Saunders ("Saunders")'s claims of ineffective assistance of counsel, and recommended further that an evidentiary hearing be scheduled as to the other claim of ineffective assistance.

No objections were filed by either party, and the time for objecting has expired. The Court accepts the findings and recommended disposition and will order an evidentiary hearing limited to one issue, as noted below.

Saunders is required to have counsel for this hearing. Rule 8(c), Rules Governing Section 2255 Proceedings for the United States District Courts; United States v. Leopard, 170 F.3d 1013, 1015 (10th Cir. 1999). The Court notes that Saunders is currently proceeding *pro se* and has not been granted *in forma pauperis* status. Therefore, within the time frame noted below, Saunders must either have counsel enter an appearance in this case,¹ or else submit evidence that he is financially unable to obtain counsel, so that an attorney may be appointed for him under 18 U.S.C. § 3006A.

¹If Saunders's former counsel Matthew M. Robinson of Covington, Kentucky will represent Saunders at this hearing, he is reminded that he must proceed in accord with Local Rule D.N.M.LR-Civ. 83.3.

Order

IT IS HEREBY ORDERED that the Findings and Recommended Disposition of the Magistrate Judge are adopted by the Court.


IT IS FURTHER ORDERED that Saunders's claim of ineffective assistance of counsel in failing to conduct adequate pretrial investigation and cross-examination of the Government's chief witnesses is dismissed.

IT IS FURTHER ORDERED that Saunders's request for an evidentiary hearing is granted, limited to the claim of ineffective assistance of trial counsel in allegedly advising Saunders to testify at trial.

IT IS FURTHER ORDERED that on or before November 30, 2008, Saunders must either have counsel enter an appearance in accord with D.N.M.LR-Civ. 83.4, or else Saunders must submit evidence that he is financially unable to obtain counsel so that an attorney can be appointed for him under 18 U.S.C. § 3006A; and Rule 8(c), Rules Governing Section 2255 Proceedings for the United States District Courts.

IT IS FURTHER ORDERED that the Clerk is directed to send application forms for appointment of counsel under 18 U.S.C. § 3006A to Saunders at his address of record.

IT IS FURTHER ORDERED that once Saunders has secured the services of counsel, the Court will schedule an evidentiary hearing.


UNITED STATES DISTRICT JUDGE